



Signed and Filed: March 01, 2011

Lewis Montali

DENNIS MONTALI
U.S. Bankruptcy Judge

UNITED STATES BANKRUPTCY COURT

NORTHERN DISTRICT OF CALIFORNIA

MEMORANDUM DECISION ON MOTION TO AVOID LIEN

14 On January 12, 2011, debtors filed a motion to avoid the lien
15 of respondents David Rea and Michael Martin. Respondents were
16 properly advised in the motion of the deadline to oppose it or
request a hearing.

18 Respondents submitted a letter to the court that was received
19 on March 1, 2011. The court regards that letter as an opposition
20 to the motion, albeit an untimely one. The letter does not
21 contest the present value of the debtor's property, as alleged in
22 the motion, nor does it offer any factual or legal basis that
23 would be sufficient to defeat the motion on any other ground.
24 Instead, the letter sets forth the respondents' prior good faith
25 in attempts to assist the debtors, suggests a continuing
26 willingness to work with the debtors and stresses the financial
27 hardship they will suffer if the lien is avoided. Respondents
 have not requested a hearing.

1 The court will overlook the lateness of the response and the
2 informal nature of it, together with the absence of any
3 declaration to establish the facts asserted by respondents. The
4 court also accepts as undisputed respondents' prior and present
5 good faith, the possibility that property values will return, and
6 that granting the motion causes them financial harm. Still, the
7 court must overrule the opposition as legally insufficient.

8 Debtors are entitled to an order issued in accordance with
9 this court's Guidelines for Valuing and Avoiding Liens in
10 Individual Chapter 11 Cases and Chapter 13 Cases, which
11 respondents are urged to review at www.canb.uscourts. If debtors
12 complete and confirm their Chapter 13 plan they will be entitled
13 to a judgment avoiding the respondents' lien for all purposes; if
14 their case is dismissed or converted to Chapter 7, the lien will
15 be preserved.

16 Counsel for debtors should serve and upload an order avoiding
17 respondents' lien for the reasons stated in the motion and in this
18 memorandum decision.

END OF MEMORANDUM DECISION

COURT SERVICE LIST

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